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NEWSPAPERS AND CONCENTRATION



**Daniel Shaw
Terrence J. Thomas
Economics Division**

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NEWSPAPERS AND CONCENTRATION

INTRODUCTION

Policymakers are always concerned about industrial concentration and the possibility that it might restrain output, raise prices and erode competitiveness. In Canada, policymakers are especially worried that concentration in the cultural industries might lower the quality and characteristics of the product -- including the availability of Canadian content. This paper examines these concerns in detail, focusing on the newspaper industry.

The Canadian newspaper industry has been studied before, both alone and as part of the overall media sector. Some of the studies will be discussed below, but the primary frame of reference for this paper will be the acquisition by Southam Inc., the Toronto-based newspaper giant, of 13 community newspapers, a real estate publication and three flyer distribution businesses in the Lower Mainland of British Columbia. At the time of the acquisition, May 1990, Southam already controlled the two dailies in the Lower Mainland, the *Vancouver Sun* and *The Province*.

ISSUES

The acquisition of one newspaper by another raises two issues: monopoly and freedom of speech. The first issue is raised by any increase in corporate concentration and is the particular concern of the Bureau Competition Policy. The second issue is only really relevant for the media. Both issues, but particularly the second, have been addressed by parliamentary and Royal Commissions.

The issue of monopoly seems straightforward. Everyone knows why monopoly is bad: it makes prices too high and quantity too low; that is, monopolists can restrict supply to obtain a higher price than would prevail in a competitive market. Some community



newspapers (the "controlled-circulation" papers) are distributed free of charge, so the relevant price is the rate charged advertisers. Whether monopoly power exists and can be exercised depends on whether there are other sources of advertising in the area served by the newspaper. (An "oligopoly," a market situation with a few sellers, might also exercise some monopoly power.)

In discussing advertising substitutes, it is necessary to distinguish three types of advertisers (national, regional and local) and three types of media (print, radio and television). Print media transmit messages that are visual and long-lasting; radio transmits spoken messages that tend to be short-lived; and television transmits visual and spoken messages that are generally short-lived but may be long-lasting if taped for replay on VCRs. Community newspapers depend on local advertisers, for whom they compete with other community papers and advertising flyers ("shoppers"). In some cases, other media, such as radio, television, and daily newspapers, may also compete for local advertising. Even where there is no daily competitor and no shoppers, the community paper might not be able to set monopoly advertising rates because the potential advertisers (for example the local government or a dominant local business) might have enough economic clout to influence the rates.

The second issue, "freedom of speech," is sometimes called "diversity of views." In the context of newspaper concentration, both phrases go beyond the traditional view of the right to a certain expression and imply the right to have multiple expression (that is, the availability of multiple points of view on any topic).

Unfortunately, the seemingly innocent phrase the "right to a diversity of views" masks many problems, such as how to define the number of views that constitute a "diversity." For example, there are several political parties in Canada, but within each caucus there can be several views. The official party position may be a balancing of these views or a single, dominant view. Do citizens have the right to know all the constituent views or only the official view? And what about the fringe parties' views, which, almost by definition, will differ from those of the established parties? Even if one could establish that, say, three views constituted a diversity, three available newspapers would not guarantee presentation of three views. Two of the three papers, or all three, could share a viewpoint, so that readers would miss that of at least one party. Adding more newspapers would not necessarily solve the problem.

On the other hand, a single newspaper is not automatically limited to a single viewpoint. It may have a strong and consistent editorial slant (perhaps linked to the views of one political party), but its reporters and columnists may not agree with the official view and may have the freedom to say so. During the free trade debate in 1988, for example, the editorial columns of some newspapers were strongly in favour, while their columnists were castigating the Agreement at every opportunity. Clearly, then, the number of newspapers may not match the number of opinions expressed in them.

As in the case of monopoly, the existence of substitutes is important for presenting a diversity of views. Commentators in different media may provide various views on any issue. The more important a local issue or event, the more alternatives to local newspapers will appear, perhaps in the form of phone-in radio shows, or notices in stores. Note that the substitutes for information and views are not necessarily the same as the substitutes for newspaper advertising.

It is difficult to prove that an increase in concentration or acquisition by a chain has adversely affected the readers of a community newspaper, especially a controlled-circulation paper. A newspaper is a bundle of characteristics, of which one is the diversity or balance of its views, but others are the scope and accuracy of its reporting and its entertainment value. The overall quality of a newspaper depends on the mix and level of these characteristics, and they are difficult to measure. If, however, we become involved in examining the diversity of views, we have to address the quality of newspapers.

PREVIOUS REPORTS

Parliament has long been concerned with possible problems involving concentration in the media. In 1970 the Senate issued a report by the Special Senate Committee on Mass Media (the Davey Report),⁽¹⁾ and in 1981 the Royal Commission on Newspapers issued the Kent Commission Report.⁽²⁾ Both asked whether a more concentrated newspaper industry ~~unreasonably restricts the availability of diverse viewpoints on any issue.~~

(1) The Senate, Special Committee on Mass Media, Report, ("The Davey Report"), 1970.

(2) Royal Commission on Newspapers, (the "Kent Commission"), *Report*, 1981.

A. Davey Report (1970)

A major recommendation of the Davey Report was the establishment of a Press Ownership Review Board which would have the power to approve or disapprove mergers between, or acquisitions of, newspapers and periodicals. It was to use one basic guideline: "*all transactions that increase concentration of ownership in the mass media are undesirable and contrary to the public interest -- unless shown to be otherwise*" (Vol. I, p. 71).

The Davey Report recognized three types of concentration: newspaper chains, mixed-media holding companies and conglomerates with some media holdings. The Press Ownership Review Board would be restricted to the print media, so, although there could be some review of mixed-media concentration involving magazines and newspapers, the Davey Report was concerned primarily with concentration by newspaper groups. Weeklies were explicitly included in the proposal for the Board: "In other words, concentration in the weekly newspaper industry would be limited to those instances in which the public interest would be served" (Vol. I, p. 150).

The Davey Report recognized that the criteria used by the Board would be "of a fairly subjective nature" (Vol. I, p. 72), but thought that the proposal was still workable. It provided the following guidance:

Beyond the broad guidelines we propose, it would be up to the Board to define its own criteria of the public interest. But we recommend that any such definitions should include consideration of (a) whether the proposed merger would lengthen the odds on survival of a newspaper that might otherwise die; and (b) what would likely happen to the editorial character of the newspaper to be purchased, in view of the publisher's past performance on the newspapers he already owns, *in relation to the profits they generate*. The onus should be on the purchaser, in other words, to demonstrate that he is in as good or better position to serve the public interest than is the present owner. (Vol. I, p. 73, emphasis in original)

On 9 May 1990, 20 years after the tabling of the Report of the Special Committee of the Senate on Mass Media, the Honourable Keith Davey spoke in the Senate on the state of the media in Canada. He pointed out that the Committee had focused on three major concerns: concentration, quality and Canadian cultural survival. "Our first and primary concern... was the concentration of media ownership, especially the concentration of print ownership. Here the

situation, I'm sorry to say, in the last 20 years has gone from bad to worse... "(3) To back this up, Senator Davey compared group ownership of daily newspapers in 1970, 1980 and 1989; he did not, however, give any figures for concentration of community newspapers. Looking back over 20 years, he recognized the growing influence of television but argued that "print still orders society's agenda. True, it is television which defines how we respond to those items on the agenda, but it is still print which lines them up."

B. The Kent Commission Report (1981)

The Royal Commission on Newspapers was formed soon after the simultaneous closing of daily newspapers in Ottawa and Winnipeg. Its mandate, however, was much broader than an examination of events in the two cities; the Report covered the entire newspaper industry in Canada, including links between that industry and other media and possible changes to the industry from advances in computer technology. Perhaps because of the broad coverage, weekly or community newspapers received scant attention in the Report, nine paragraphs out of 255 pages of text.

Background research for the Kent Commission did include evidence on the number, size and ownership of weekly community newspapers.⁽⁴⁾ Some of this evidence will be discussed below. The main recommendation of the Kent Commission was for a Canada Newspaper Act that would provide for restrictions on the ownership of newspapers, the divestiture of some newspapers owned by existing groups and a Press Rights Panel to monitor the implementation of the legislation. The following are the relevant paragraphs concerning ownership and divestiture of weekly newspapers:

The ownership of weekly papers by dailies presents more difficult issues of concentration. There may be some genuine economies in joint operation. Nevertheless, there is no doubt that power is undesirably and unnecessarily concentrated when, for example, the *Toronto Star* is in the same ownership as most of the major weeklies in metropolitan Toronto—a situation created while this Commission was working. We propose that the Newspaper Act

(3) The Senate, *Debates*, 9 May 1990, p. 1589.

(4) E. Hallman, *et al.*, *The Newspaper as a Business*, Royal Commission on Newspapers, Research Studies on the Newspaper Industry, Vol. 4.

provide that the proprietor of a daily paper may not own or control a newspaper published less frequently (a weekly or a twice-weekly) which is, in all or in any significant part of the area in which the daily circulates, either the sole weekly or a dominant weekly facing only minor competition. In cases where the application of this principle is in doubt, or comes into doubt because a competitive weekly closes, the Press Rights Panel should be empowered to adjudicate each case on its merits. It would take into account the extent of any competition between both weeklies and dailies in the area.

The Commission has had difficulty in deciding whether it should recommend that divestment be required in existing situations which clearly breach the principle we propose for the future. Weekly newspapers are, however, very different from broadcasting stations. In some cases their relationship to the daily is much closer and long-established. They are more local; they require less capital; in metropolitan areas, at least, they come and go more easily. We do not think that there is the same overwhelming case, either in principle or on practical grounds, for ordering divestment of weeklies as there is in cases of cross-ownership with broadcasting media. It is better to rely on the reasonable hope, in situations such as that of the *Toronto Star*, that competitive weeklies will soon arise to disturb it. The principles we have proposed should be applicable to changes in ownership made after the date of publication of this Report. (p. 240)

In 1982, the government directed the CRTC not to issue or renew broadcasting licences for daily newspaper owners where "the major circulation area of the daily newspaper substantially encompasses the major market area served or to be served by the broadcasting undertaking." A recent book in the Canadian news media discussed the directive:

The only result of this was a CRTC decision in 1983 not to renew an Irving Television licence in New Brunswick, although the Irving group was given a temporary renewal to provide time for it to adjust to the ruling. This breathing space turned into a reprieve in 1985 when the Liberal directive to the CRTC⁽⁵⁾ was repealed by the Conservative government.

(5) Peter Desbarats, *Guide to Canadian News Media*, Harcourt Brace Jovanovich, Toronto, 1990, p. 66.

NEWSPAPER INDUSTRY IN CANADA

A. Circulation

In 1988, there were 107 daily newspapers with an average combined daily circulation of just under six million copies. This was 20 newspapers fewer than in 1978; however, the combined daily circulation of all papers had improved by 8.3% in the same period.

Table 1 indicates that only one French daily had ended publication in the decade, but that overall readership of French dailies was down. In contrast, while 12 English dailies had folded, aggregate readership of English dailies was up considerably, with their average combined daily circulation having risen by 13.8% to just under 5 million copies.

Table 1
Selected Circulation Statistics
Number and Circulation

| | English | | French | | Other | | Total | |
|------|---------|----------------------------------|--------|----------------------------------|--------|----------------------------------|--------|----------------------------------|
| | Number | Average Daily Circulation ('000) | Number | Average Daily Circulation ('000) | Number | Average Daily Circulation ('000) | Number | Average Daily Circulation ('000) |
| 1978 | 108 | 4,351 | 12 | 1,092 | 7 | 91 | 127 | 5,534 |
| 1983 | 106 | 4,580 | 10 | 964 | 2 | 15 | 118 | 5,559 |
| 1988 | 96 | 4,951 | 11 | 1,042 | - | - | 107 | 5,993 |

Source: Statistics Canada, Canada Year Book, 1992

Non-daily newspapers saw an extraordinary increase in demand; between 1978 and 1988 they increased from 1,135 to 1,425, or by 25.6%. At the same time, average circulation per issue rose from 10,632 to 13,838, which represents 30.2% growth. Total circulation grew by 38.9% to just under 20 million copies.

Community newspapers led the pack. Their number increased to 1,207 or by 9.2% between 1978-88; their average circulation per issue rose to 13,352 or by 40.6%; their total combined circulation rose to 16.4 million or by 56.2%.

Table 2
Canadian Weekly Newspapers
Number and Circulation

| | Community Newspapers | | | All Non-daily Newspapers | | |
|------|----------------------|-----------------------------|---------------------|--------------------------|-----------------------------|---------------------|
| | Number | Combined Circulation ('000) | Average Circulation | Number | Combined Circulation ('000) | Average Circulation |
| 1978 | 1,105 | 10,495 | 9,498 | 1,135 | 14,194 | 10,632 |
| 1983 | 844 | 7,615 | 9,023 | 1,154 | 12,348 | 12,306 |
| 1988 | 1,207 | 16,394 | 13,352 | 1,425 | 19,719 | 13,838 |

Source: Statistics Canada, Canada Year Book, 1988, 1990 and 1992

B. Advertising and Sales Revenue

The newspaper industry fared well between 1978 and 1988. In 1978, the industry earned a total of \$977.0 million in revenue, of which \$757.5 million was derived from advertising and \$206.3 million from sales. By 1988, the newspaper industry was earning \$2.4 billion in revenue from advertising, up 216% from 1978. Sales revenue totalled \$651 million in 1988, also up 216% from 1978.

The relative percentages of the advertising categories making up that total revenue had changed little. In 1988, local advertising accounted for 57.6% of total advertising revenue; classified advertising accounted for 23.0%; and national advertising accounted for 19.4%. In 1978, these percentages had been 52.8%, 28.5% and 18.7%, respectively.

There is a contrast between the revenues of dailies and weeklies. First of all, dailies earned more than 10 times the advertising revenue of community newspapers, and more than 300 times the sales revenue. Community newspapers depended almost exclusively on local advertising, which accounted for 87% of all revenue, or 94% of total advertising revenue, in 1988. The remainder of revenue was fairly evenly split between national advertising and sales. Daily newspapers, on the other hand, earned 40% of their revenue from local advertising, 22% from classified advertising, 17% from national advertising, and 21% from sales.

Table 3
Newspaper Advertising and Sales Revenue - 1988.

| ADVERTISING REVENUE | | | | | |
|------------------------|-----------|------------|----------|-----------|---------------|
| | Local | Classified | National | Total | Sales Revenue |
| (Thousands of Dollars) | | | | | |
| Daily | 1,021,276 | 550,497 | 426,663 | 1,998,436 | 523,393 |
| Community | 198,641 | - | 13,103 | 211,564 | 17,370 |
| Others | 160,517 | - | 26,867 | 187,384 | 110,031 |
| Total | 1,380,434 | 550,497 | 466,633 | 2,397,384 | 650,794 |

Source: Statistics Canada, Catalogue 36-251, Printing, Publishing and Allied Industries, 1988.

C. Ownership Concentration

In 1981, there were 111 daily newspapers published in Canada, all but 27 of which were controlled by newspaper chains. The five largest chains held 67 dailies or 60% of the total. Since then, Hollinger Inc. has acquired Sterling Newspapers and UniMédia, and Toronto Sun Publishing Ltd. has acquired Bowes Publishing. By 1991, the largest five chains, which include Thomson, Southam, Hollinger, Toronto Sun and Quebecor, held 78 dailies out of 96, or 81%, of the industry. Independent daily newspapers have declined from 27 to 17, or by 37%, in the past decade.

The weekly or community newspapers operate in a much less concentrated environment than daily newspapers. In 1981, the Kent Commission stated that chains accounted for 527 of 1,044 newspapers. The Canadian Community Newspaper Association reports that in 1990 the Association included 670 English language newspapers in its survey, 391 belonging to 133 media chains.⁽⁶⁾ ~~Weekly media chains now account for 58% of the community newspapers, up from 50% in 1981.~~ While the number and size of chains are increasing, the largest five in the industry now hold approximately the same percentage of weeklies as they did

(6) Telephone conversation with official at Canadian Community Newspaper Association.

a decade ago. In 1981, the five largest weekly chains accounted for 96 community newspapers or 9% of the industry. In 1991, the five largest weekly chains, Quebecor, Thomson, Torstar, Toronto Sun and Southam, held 142 weeklies, or just under 10% of the industry.

Table 4
Daily and Weekly Newspaper Ownership, 1991

| | Daily Newspapers | | Weekly Newspapers | | Total Newspapers | |
|-------------------------------------|------------------|------|-------------------|--------------------|------------------|--------------------|
| | 1981 | 1991 | 1981 | 1991 | 1981 | 1991 |
| Thomson Newspapers Corp. | 38 | 40 | 15 | 30 | 53 | 70 |
| Quebecor Inc. | 2 | 4 | 28 | 41 | 30 | 45 |
| Southam Inc. ⁽¹⁾ | 14 | 17 | 0 | 21 | 14 | 38 |
| Hollinger Inc. | | 12 | | 19 | | 31 |
| Sterling | 11 | | 8 | | 19 | |
| UniMédia | 2 | | 12 | | 14 | |
| Toronto Sun | 3 | | 2 | | 5 | |
| Toronto Sun | | 5 | | 24 | | 29 |
| Bowes Pub. | 3 | | 7 | | 10 | |
| Torstar Corporation | 1 | 1 | 31 | 26 | 32 | 27 |
| Sub-total | 74 | 79 | 103 | 161 | 177 | 240 |
| Other Day/Week Chains | 25 | .. | 52 | .. | 77 | .. |
| Total Day/Week Chain ⁽²⁾ | 99 | .. | 155 | .. | 254 | .. |
| Other Newspapers | 12 | .. | 889 | .. | 901 | .. |
| Total Newspapers | 111 | 96 | 1,044 | 1,425 ^e | 1,155 | 1,521 ^e |

(1) Includes 1990-1991 acquisitions of 15 community newspapers in the Vancouver-B.C. Lower Mainland area discussed in this paper.

(2) 26 Day/Week chains; e - estimated by using 1978 figure; .. - unknown

Sources: E. Hallman *et al.*, *The Newspaper as a Business*, Royal Commission on Newspapers, Research Studies on the Newspaper Industry, Vol. 4, p.46; *The Financial Post, Survey of Industrials 1991*.

The increased profitability of these community newspapers has attracted other media chains. In 1981, the top eight daily newspapers with at least one weekly held 177. By

1991, the top six daily newspapers with at least one weekly held 240. The flourishing of the weekly newspaper industry can be attributed partly to the movement of population and retailers away from the downtown area and to the suburbs. This dispersal of retailing throughout the major metropolitan cities of Canada has led advertising strategy to move towards increasing local market penetration through community newspapers and away from the wide coverage of the dailies. Another factor is the declining cost of entry to the print industry. Advances in technology in the 1960s, such as computers and "cold type" composition or offset printing, revolutionized the newspaper industry as a whole. Today, with a thriving second-hand and rental market for computers, "desktop publishing" has considerably reduced the start-up cost for weekly newspapers. As one reporter of a community newspaper put it: "Anyone with a modest savings account can establish a paper now." An official at the CCNA claims that \$10,000 could get a paper started today; 20 years ago it might have cost 10 times that amount.

THE SOUTHAM TAKEOVER

In May 1990, Southam Inc. announced that in a complex series of transactions it had gained control of a number of community newspapers on the Lower Mainland of British Columbia. On 29 November 1990, the Director of Investigation and Research of the Bureau of Competition Policy ("Director") filed an application to contest the acquisition by Southam Inc. *et al.* ("Southam") of 13 community newspapers, one real estate publication, three flyer distribution businesses, and two printing businesses in the Lower Mainland of British Columbia. The application sought an order from the Competition Tribunal requiring Southam to dispose of (or not to acquire) an interest in the businesses of publishing the *Real Estate Weekly*, the *Vancouver Courier*, and the *North Shore News*, the last two of which have the greatest distribution of 40 community newspapers in the region.

Southam has long had an interest in daily newspapers in the Lower Mainland of British Columbia as publisher of the only two dailies, the *Vancouver Sun* and *The Province*. The acquisitions involve community papers serving the same geographic area. Community newspapers tend to be "controlled distribution publications"; that is, they are delivered to a particular target group in the community free of charge.

A. The Director's Position

1. Vancouver Courier and North Shore News

The Director contended that the *Vancouver Courier* merger substantially prevented or lessened, or was likely to prevent or lessen, competition in the market for supplying newspaper retail advertising services in the City of Vancouver. The Director submitted that the relevant market was the "Vancouver Newspaper Retail Advertising Market" (VNRAM). The estimated population of the City of Vancouver in 1990 was 470,000 and the number of households was 195,620.

As a result of the merger, Southam newspapers would collectively control 86.5% of the advertising revenues of VNRAM, totalling \$26 million. In the Director's opinion, circulation and market shares of advertising revenue in the relevant market were:

| | Primary Daily Circulation 1989 | | Market Share of Advertising Revenue |
|-----------------------------|--------------------------------|----------------|-------------------------------------|
| | Vancouver | Total | |
| <i>The Province</i> | 48,535 | 154,269 | 19.7% |
| <i>Vancouver Sun</i> | 72,060 | 214,979 | 52.7% |
| <i>Vancouver Courier</i> | 65,000 | 65,000 | 14.1% |
| Combination of | | | 13.5% |
| <i>The West Ender</i> | 56,000 | 56,000 | |
| <i>Metro Vancouver News</i> | 75,200 | 75,200 | |
| <i>The Vancouver Echo</i> | 53,000 | 53,000 | |
| <i>The Revue</i> | 11,500 | 11,500 | |
| <i>The Georgia Straight</i> | 28,000 | 75,000 | |
| Total | 409,295 | 704,948 | 100.0% |

The Director also contended that the *North Shore News* merger substantially prevented or lessened, or was likely to prevent or lessen, competition in the market for supplying newspaper retail advertising services in the area of the Lower Mainland known as the North Shore. The Director submitted that the relevant market was the "North Shore Newspaper Retail Advertising Market" (NSNRAM). The North Shore consists of the City of North

Vancouver, the Municipality of North Vancouver and the Municipality of West Vancouver. The estimated population in the North Shore in 1990 was 148,735 and the estimated number of households was 58,400.

As a result of this merger, Southam newspapers would collectively control 93.9% of the advertising revenues of NSNRAM. In the Director's opinion, the relevant circulation and market shares of advertising revenue were:

| | Primary Daily Circulation 1989 | | Market Share of Advertising Revenue |
|-----------------------------|--------------------------------|---------|-------------------------------------|
| | North Shore | Total | |
| <i>The Province</i> | 14,083 | 154,269 | 13.5% |
| <i>The Vancouver Sun</i> | 26,390 | 214,979 | 23.8% |
| <i>The North Shore News</i> | 60,535 | 60,535 | 56.9% |
| <i>The Georgia Straight</i> | 6,500 | 75,000 | 6.1% |
| Total | 107,509 | 504,783 | 100.0% |

In terms of acceptable substitutes in both markets, for example, television, radio, magazines, billboards and free-standing flyers, the Director's application stated:

These alternative advertising vehicles are not included as products in the Vancouver Newspaper Retail Advertising Market because they are not acceptable substitutes for newspaper retail advertising services. A significant price increase in the newspaper retail advertising services would not result in a significant shift to these products.

Television and radio advertising, billboards and signage have limited information content and information retention value. Magazines and directories cannot be used for time-sensitive retail advertising messages. Specialty and foreign-language publications have limited readership. Classified advertising restricts the format in which the advertising message can be conveyed. Free-standing flyers are less attractive because of the high desirability of distribution of flyers in a newspaper.

(7) The Competition Tribunal, The Director of Investigation and Research and Southam Inc., Lower Mainland Publishing Ltd., Rim Publishing Inc., Yellow Cedar Properties Ltd., North Shore Free Press Ltd., Specialty Publishers Inc., Elty Publications Ltd., CT-90/1, *Amended Notice of Application*, p. 33.

The Director also contended that there were significant barriers to entry:

Regardless of the source of potential entry, an entrant will encounter substantial difficulty in achieving an acceptable level of readership and advertising...

The costs of entry, including costs of equipment, staff, production and distribution, have a significant irrecoverable or "sunk" component in that they will not be recoverable in the event the entry initiative failed.⁽⁸⁾

The Director also pursued these mergers jointly, claiming that together they substantially prevented or lessened, or were likely to prevent or lessen, competition in the market for the supply of newspaper retail advertising services in the market area of the Lower Mainland.

2. *Real Estate Weekly*

The Director challenged Southam's indirect acquisition of the *Real Estate Weekly*, claiming that it substantially prevented or lessened, or was likely to prevent or lessen, competition in the supply of print real estate advertising services in the Lower Mainland other than the North Shore, and in the North Shore. The Director alleged that, Southam, through control of the *Real Estate Weekly*, *The Province* and the *Vancouver Sun*, would account for the most significant part of the supply in the Lower Mainland. In the North Shore, the *North Shore News*, together with the *Real Estate Weekly*, would account for substantially all the advertising.

The Director argued that real estate advertisements on cable television have apparent capacity limitations and are not an adequate substitute for print advertising. Therefore, the relevant market was narrowly defined as the print real estate advertising of the Lower Mainland excluding the North Shore, and the North Shore.

(8) *Ibid.*, p. 34.

B. Southam's Position

1. *Vancouver Courier and North Shore News*

Southam claimed that neither merger would substantially prevent or lessen competition substantially in any relevant market in Canada and that the "newspaper retail advertising services" was not the relevant market. The Director had omitted competition from the *Globe and Mail* and the *Financial Post* with reported daily circulations of 30,190 and 15,209, respectively. According to Southam, *The Province* and the *Vancouver Sun* serve markets distinctly different from each of the Lower Mainland Publishing Ltd. ("LMPL") papers, which are community papers. The two types of publication cater to different needs of both readers and advertisers and serve different geographic markets. Furthermore, the fact that numerous media in the Lower Mainland compete very effectively for such advertising implied that effective competition would continue for both Southam dailies and the LMPL papers in each of their relevant markets subsequent to the acquisitions.

The Southam dailies, like most daily papers serving large metropolitan areas, have a number of characteristics that distinguish them from community papers, including their content, frequency of publication, and circulation. The Southam dailies attract a general readership within the Lower Mainland by combining a unique cluster of services in one package. They carry community-level stories only to the extent that they might be of interest to their readership as a whole. By contrast, the news and editorial content of LMPL papers, like those of other community newspapers, are generally not as time-sensitive and are limited predominantly to matters of local interest.

The penetration levels of the Southam dailies (i.e., the percentage of households reached in an area - a significant concern to advertisers) are substantially lower than those of the LMPL papers. In 1989, the *Vancouver Sun* and *The Province* had penetration levels of about 33% and 25% respectively. The LMPL papers had virtually 100% penetration in each of the limited geographic areas they serve.

The Southam dailies are mass media and attract virtually all of their display advertising from national and major retail advertisers seeking a mass audience within the Vancouver Mainland and beyond. National advertisers generally advertise in the Southam dailies, whose broad coverage more closely matches the large area where their products and

services are available. The LMPL papers, on the other hand, attract advertising predominantly from local retailers, who wish to transmit messages within their local areas.

In 1989, the Southam dailies derived 2% or less of their revenue from display and flyer insert advertising from local advertisers across the Vancouver Mainland. In contrast, each of the LMPL papers derived close to two-thirds of such revenue from local retail advertisers.

In 1989, the *Vancouver Sun* derived over 50% and *The Province* over 55% of display and flyer insert revenues from major retail advertising. In contrast, only about one-third of the revenues of the *Vancouver Courier* and the *North Shore News* were derived from that source. To a large degree, use of the LMPL papers by major retailers complements retail advertising in the Southam dailies rather than replaces it.

The principal sources of competition for the Southam dailies, as mass media, are network television and radio. Television, in particular, is a powerful competitor because it covers a wide geographic area and because it transmits audio and video messages simultaneously.

Canada Post will remain a significant competitor for flyer delivery for both LMPL papers, because it offers retailers advantages such as flexible delivery schedules, competitive rates, and exclusive access to individual mail boxes in apartments. It also cuts advertisers' costs by allowing the specification of distribution areas as small as a portion of a city block.

Recent developments in computerized typesetting and printing have substantially lowered the cost of publishing so that there are now low entry barriers to the community newspaper business. The number of community newspapers is thus in constant flux because many publications are short-lived and new entries are common.

2. *Real Estate Weekly*

Southam denied that "print real estate advertising" was the relevant market on the grounds that there was minimal competition between the Southam dailies, which were mass media, and the *Real Estate Weekly*, which was highly location-selective. The *Real Estate Weekly* is a controlled-distribution real estate advertising publication that now has 14 separate zoned editions. By limiting the circulation area of each edition, and by specializing exclusively in real estate advertising by realtors, this paper is able to offer detailed information on the location and physical characteristics of houses for sale, including photographs of virtually every listing. Southam dailies are viewed by realtors as ineffective from the point of view of quality, coverage

and cost and most real estate advertising in the Southam dailies is placed by developers and individuals selling their own properties.

It costs very little to enter the specialty newspaper market. Realtors on the North Shore, for example, could, like many other realtors throughout Canada, run their own real estate publication.

C. Mergers and the *Competition Act* (1986)

As discussed above, the Director of Investigation and Research of the Bureau of Competition Policy examined the Southam transactions under the merger provisions of the *Competition Act*, which came into effect in June 1986. Note that the *Competition Act* is not industry-specific; there are, in other words, no special provisions solely for the newspaper industry -- a fact bemoaned by both Davey and Kent with respect to previous legislation, the *Combines Investigation Act*. The following paragraphs are drawn from two publications of the Bureau of Competition Policy.⁽⁹⁾

The Director reviews all mergers and "brings matters before the Competition Tribunal on the basis that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially." The Director has three years from the time a merger is substantially completed to bring the matter to the Tribunal. After three years, any anti-competitive behaviour (such as predatory pricing) could, in certain circumstances, be reviewed by the Director as an abuse of dominant position or be prosecuted as a criminal offence.

In any investigation of possible anti-competitive behaviour, the Director must pinpoint the relevant market in which competition may be prevented or lessened. This is not necessarily straightforward; several factors are important, including what is produced, where it is sold, what firms offer, or could offer, the same product and what other products are, or could be, substitutes for the original product.

(9) Consumer and Corporate Affairs, Bureau of Competition Policy, *The Merger Provisions*, Information Bulletin No. 1, June 1988, hereafter "*Merger*."
Consumer and Corporate Affairs, Bureau of Competition Policy, *Competition Policy in Canada: The First Hundred Years*, 1989, hereafter "*Competition Policy*."

In determining whether competition in the relevant market has been prevented or lessened, the Director considers many factors, which include the following, as specified in the Act:

- (a) effectiveness of foreign competition,
- (b) failing business,
- (c) availability of acceptable substitutes,
- (d) barriers to entry,
- (e) extent of effective competition remaining,
- (f) removal of vigorous and effective competitor,
- (g) change and innovation in relevant market, and
- (h) any other factor relevant to competition (that would be affected by the merger).⁽¹⁰⁾

Note that a finding of prevented or lessened competition "cannot be made solely on the basis of evidence of market share or concentration."⁽¹¹⁾ This is very important when discussing newspapers, as there has long been a visible trend toward greater concentration in the industry, which many observers (including Davey and Kent) have assumed would automatically result in a lessening of competition. Measures of concentration attempt to reduce all factors that reflect the extent of competitiveness to a single number -- for example, the proportion of total sales accounted for by the largest firm or firms in an industry. Such measures, however attractive they may be, are too simplistic. Many factors affect the competitiveness of a market, only one of which is a change in the concentration of firms.

Possibly the greatest difference between the *Combines Investigation Act*, in effect until June 1986, and the new *Competition Act* is their treatment of mergers. Mergers were formerly treated under criminal law; after several lost cases, the government, some lawyers and academics, and other observers (such as the Economic Council of Canada) concluded that the criminal law was not appropriate to the review of mergers:

The rules of evidence, burden of proof and implication of wrongdoing found in criminal provisions are inappropriate to evaluation of a merger's future impact on the competitive environment. This situation was further exacerbated by the requirement that not only must competition be lessened

(10) *Merger*, p. 3-4.

(11) *Ibid.*, p. 4.

substantially but also that specific evidence of public detriment directly attributable to the merger be found.⁽¹²⁾

Under the 1986 Act, it is supposedly easier to counter any anti-competitive aspects of a merger. When convinced that a merger prevents or lessens competition, the Director "may bring an application before the Competition Tribunal for a remedial order in respect of all or part of the merger."⁽¹³⁾

D. The Competition Tribunal's Decision

The Competition Tribunal concluded that Southam's acquisition of the *Vancouver Courier* and the *North Shore News* community newspapers would not be likely to harm competition for advertising between Southam-owned dailies and the community newspapers in the greater Vancouver area. Specifically, the Tribunal was not convinced that dailies and weeklies were operating in the same market; while the relevant geographic market was undoubtedly the same, the relevant product market was not. Consequently, the types of advertisers sought by each type of paper were substantially different. In the Tribunal's estimation:

There is in fact no evidence before the Tribunal that advertisers are highly sensitive to the relative prices of the dailies and the community newspapers. ... the community newspapers appear to have become the preferred vehicle for many advertisers that formerly relied solely on the dailies. The evidence is that the ability to obtain very high household penetration in the areas from which they draw customers is a major advantage that advertisers find in community newspapers. They are unlikely to be willing to give that up simply because the cost of advertising in the dailies goes down. With their present product configurations the dailies and community newspapers are at best weak substitutes for some advertisers.

A high proportion of advertisers in the community newspapers are weak candidates for the dailies: their trade is too local.⁽¹⁴⁾

(12) *Competition Policy*, p. 18.

(13) *Merger*, p. 4.

(14) The Competition Tribunal, The Director of Investigation and Research and Southam Inc. *et. al.*, CT-90/1, *Reasons and Order*, 1992, p. 211-212.

whether newspaper concentration substantially prevents or lessens competition, or is likely to prevent or lessen it. Government activity has thus concentrated on monopoly in the product market rather than on freedom of speech in the market for ideas. The Southam case involving community newspapers in B.C. is a good example of the forced emphasis on economic elements. As seen above, much of the debate between the Director and Southam focused on real estate flyers, which contribute little to diversity of views.

The period from the takeover of the suburban weeklies by Southam to the final decision by the Competition Tribunal covered over two and a half years. During that time, the newspaper industry in Canada did not stay fixed. Pressure on newspapers from alternative media and rival advertisers has led to constant restructuring -- takeovers, stock swaps, the sale of non-newspaper assets, and the modernization of printing plants and newsrooms. In fact, the normal state of the industry is now a state of flux.

In November 1992, for example, a month before the final decision was handed down, Hollinger Inc., whose principal shareholder is Conrad Black, entered into an agreement to buy Torstar Corporation's 22.6% block of voting shares in Southam Inc. for \$259 million. The transaction was heavily scrutinized in the media, not least because of the involvement of Conrad Black. Through Hollinger, Black has put together a worldwide newspaper empire, and in doing so has acquired a reputation for his hands-on approach to the management of newspapers.

Personalities also figured prominently in March 1993, when Power Corporation of Canada, headed by Paul Desmarais, acquired an 18.7% stake in Southam Inc. According to a *Financial Post* article at the time, Power Corp. and Hollinger "announced an agreement that ensures both companies 'voting parity' on the Southam board and the ability to acquire a maximum of 23.5% of Southam apiece -- a combined 47%." The article then quoted Conrad Black: "With 47% of the stock, if you can't control a company, you should join a monastery or something."

The *Competition Act*, of course, is concerned with effective control of Canadian corporations, so the Bureau monitors transactions involving blocks of newspaper shares. Any recent transactions could be analysed along the lines of this paper's analysis of the Southam takeover of the suburban Vancouver weeklies. In each analysis, the definition of the market would be crucial in determining whether competition was affected by the transaction.





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